IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2887 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RK THESIA

Versus

COMMISSIONER OF ENTERTAINMENT TAX

Appearance:

1. Special Civil Application No. 2887 of 1992
MR VYAPAK DESAI, Advocate for MR BH CHHATRAPATI, Advocate for Petitioner
MR PREMAL JOSHI, AGP for Respondent Nos. 1-4

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE K.M.MEHTA

Date of decision: 09/04/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

#. The petitioner challenges the impugned order dated 26th November, 1991 at Annexure:G to the petition, by which the revision application of the petitioner was rejected, confirming the appellate order which, in turn, confirmed the issuance of the show cause notices regarding the escaped entertainment tax.

#. According to the petitioner, he is a sole proprietor of Harshad Cinema in Kalawad, Jamnagar. On 4th June,1983, Entertainment Tax Collector issued show cause notice to the petitioner, stating why criminal action should not be taken against him under Section 15 of the Gujarat Entertainment Tax Act, 1977, in respect of sale of unapproved tickets which were detected in a surprise check conducted on 14th February,1983. The petitioner had replied to that show cause notice on 3rd August, 1983. According to the petitioner, no adverse order was made against him pursuant to the hearings that followed the show cause notice. The complaint which was filed against the petitioner on 27th June,1984 under Sections 15 and 16 of the said Act came to be rejected by the learned Judicial Magistrate First Class, Kalawad on 19.4.85 as per the order, a copy of which is at Annexure:A to the petition.

#. Thereafter on 4th July,1987, the Prescribed Officer issued show cause notices under Section 9(1) of the Act to the petitioner regarding escaped entertainment tax for the period between September, 1981 and 14th February, 1983, to the tune of Rs. 48,208.55 ps. The petitioner raised a contention in reply to these notices that the notices were time barred under Section 9(5) of the said Act read with Rule 15 of the Gujarat Entertainment Tax Rules, 1979. The Prescribed Officer-Mamlatdar, however, made an order on 10th August, 1987, rejecting the contention of the petitioner that the notices were time-barred and confirmed the demand of the said amount on the ground that it had escaped assessment.

#. The petitioner challenged the above order before the Collector, Entertainment Tax, Jamnagar. The Collector, however, by his order dated 9th August, 1991, confirmed the reassessment and payment of entertainment tax under order of the Mamlatdar, dated 10th August, 1987, as per his order at Annexure:E to the petition.

#. The petitioner challenged the Collector's order by way of a revision application under Section 13 of the Act before the Commissioner, Gujarat State, who by his order

dated 26th November, 1991 at Annexure:G to the petition, rejected the application, confirming the orders passed by the authorities below.

#. The only question that arises for our determination in this petition is whether issuance of show cause notices under Section 9(1) of the Act was beyond the period of limitation prescribed under sub-section (5) of Section 9. The contention of the petitioner has been consistently rejected by all the authorities on the ground that criminal proceedings were pending against the petitioner and the order made by the learned Magistrate, acquitting the petitioner for the offences under Sections 15 and 16 of the Act was made only on 19.4.85 and, therefore, the show cause notices which were issued on 4.7.87 were issued within the prescribed period of three years and were, therefore, not time-barred. It was argued by the learned counsel for the petitioner that this reasoning of the authorities, who have made the impugned orders, was not warranted by the provisions of Section 9(5) of the Act and, therefore, the impugned orders were illegal.

#. Section 9(5) of the Act provides that in computing the period of limitation, for assessment or reassessment under Section 9, the time during which the proceedings for assessment or reassessment may have remained stayed under the order of a Civil Court or other competent authority shall be excluded under sub-section (1) of Section 9. It is provided by Section 9(1) that where for any reason any payment for admission to any entertainment or any complimentary ticket has escaped assessment to tax, the prescribed officer may, subject to the provisions of sub-section (3) and at any time within such period as may be prescribed, assess to the best of his judgment, the tax due on such payment or ticket, after making such inquiry as he may consider necessary and after giving the proprietor a reasonable opportunity to show cause against such assessment.

#. Rule 15(1) of the Gujarat Entertainment Tax Rules, 1979 provides that assessment or reassessment of tax under Section 9 may be made within a period of three years from the date the tax would have been payable. Thus, the period during which the action that may be taken under the provisions of Section 9(1) is prescribed as three years and in view of the provisions of sub-section (5) of Section 9, if during these three years, assessment or reassessment has remained stayed by orders of a Civil Court or other competent authority, then the period during which the stay operated is

required to be excluded. In the present case, no such stay was granted by any Civil Court or other competent authority against the assessment or reassessment. Mere pendency of the criminal proceedings against the accused under Sections 15 and 16 of the said Act would not operate as stay of the assessment or reassessment proceedings. Under Section 15 of the Act, it is provided that where any proprietor admits any person to any place of entertainment in contravention of the provisions of Section 7, such proprietor shall on conviction, be punished with fine which may extend to five hundred rupees, while Section 16 provides that any person who contravenes any of the provisions of the said Act other than Section 7, shall on conviction, be punished with fine which may extend to five hundred rupees. None of these two provisions have any bearing on the question of stay of the assessment and reassessment proceedings and, therefore, mere pendency of such criminal proceedings before the Magistrate against the petitioner could not have been treated as stay of the assessment or reassessment proceedings contemplated by the provisions of sub-section (5) of Section 9 of the Act.

#. The revisional authority and the authorities subordinate to it, therefore, erred in excluding the period of pendency of the criminal proceedings while computing the period of limitation of three years and, therefore, the issuance of notices in July, 1987 in respect of liability to pay tax said to have been arisen in February, 1983 was clearly beyond the prescribed period of limitation. The impugned orders, cannot, therefore, be sustained and are set aside. Rule is made absolute accordingly with no order as to costs.

[R.K. ABICHANDANI, J.]

[K.M. MEHTA, J.]

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